

July 29, 2016

**CONFIDENTIAL REPORT
TO THE MAYOR AND MEMBERS OF COUNCIL
OF THE TOWN OF COBALT**

I was retained for two purposes. The first was to make a presentation to council, staff and the public and to provide advice to Council and senior staff with respect to roles and responsibilities of members of council and staff as well as best practices for municipalities with respect to their operations.

The second purpose was to act as the Integrity Commissioner for the town to investigate complaints under the Council Code of Conduct. My report as Integrity Commissioner will be presented to council under separate and will not be confidential.

This report deals with issues identified during the two days of interviews and my presentation.

Summary

It was apparent during the interviews that members of council and staff are committed to the community of Cobalt. This over-arching support for the community was evident throughout.

However, during the interviews it became clear that there are some serious issues with respect to the operation of the Town at both the Council and administrative levels. This report is intended to identify some of the difficulties and to recommend changes to allow the organization to move forward in a more accountable way and to be transparent not only to the members of council and staff but also to the community at large.

There is distrust amongst members of council and between council members and administration. Some of this distrust can be attributed to what I believe are systemic issues within the organization.

“We are really broken.”

These words were spoken by a member of council during one of the interviews. They represent the opinion of many of the members of council and senior staff. Often heard was the word “dysfunctional” to describe the organization.

The organization is currently being governed, operated and managed in a way that is not sustainable.

There are significant issues, many of which go to the fundamental core of the operation of the town. There is little trust amongst members of council and between council members and staff. Individual members of council are interfering with the day-to-day operation or administration of the organization. The administration is failing to provide detailed information to council resulting in some but not all members of council being unaware of matters on which they should be fully aware. Some members of council are taking on a manager’s role. That is not included in the legislated mandate for members of council. All of this is having a negative impact on the organization.

This report is intended to identify some of the issues and to make recommendations to allow council to sit and determine its future and the future of the organization.

It was apparent during my interviews that there is a lack of understanding of the various roles of members of council and of staff. The roles, duties and responsibilities of members of council, the mayor and administration are legislated. These responsibilities and duties are set out in the Powerpoint slides accompanying my presentation. In addition, there is a belief by some that the rules just get in the way and are to be ignored. There is also an inconsistent dissemination of information within the organization. The result is a lack of trust and respect throughout the organization.

While this report cannot remove the distrust or generate respect, it does contain recommendations that, if implemented, will reduce opportunities for distrust. It is suggested that these recommendations be put in place as soon as practical by council.

It was clear throughout the interviews that members of council, or at least some members, are not made aware of some issues and events. This is occurring in a number of different ways and is resulting in fractured information being provided to members of council.

For example, some correspondence that is addressed to the mayor and members of council is not being received by all members either by being placed on a council agenda or by being distributed under separate cover. Some correspondence is being distributed to only select members of council.

In some circumstances staff is not providing correspondence to members of council. While this is an acceptable practice if staff resolve the issue raised in the correspondence, however, it is not appropriate for staff to withhold information from council members, or some of them.

The Budget Process

There are two aspects with respect to the town's budget process that require comment and immediate action.

Timing of Budget Approval

I attended at the municipal offices on June 21 and 22. The 2016 budget had not yet been presented to or nor considered by Council. I am advised that council had taken no steps to authorize expenditures after January 1, 2016. On what authority is staff expending funds on behalf of the corporation?

Only council can authorize expenditures on behalf of the corporation and that is done by the approval of the annual budget. Council has abdicated its responsibility for the financial management of the corporation!

Best practice for municipal governments in Ontario is that the budget process begin no later than December of the previous year when the draft budget should be presented to council by administration for review and approval. Council should be approving the budget either in December of the previous year or in January of the current year. In this way Council will be meeting its statutory responsibility to maintain the financial integrity of the municipality and have control of the budget process and spending.

It was suggested to me that the budget cannot be reviewed and approved by council before the town is made aware of the grants to be received for the current year and the budget requirements of outside agencies. That was a practice that existed for Ontario municipalities up until the early 1990s however it is no longer the case. The best practice now for municipal governments in Ontario is to have the budget completed as early in the current year as possible. This will require that staff begin preparation of the both current and capital budgets midway through the previous year; that is to say, for the 2017 budget preparation should begin no later than September, 2016.

Budget Committee

The town has a budget committee consisting of two members of council, one being the mayor together with the CAO as the resource person. Members of council not on the committee have been told by the CAO that they may not attend meetings of the budget

committee because that may represent a quorum of the members of council being present and thus it that committee would become a council meeting.

That is simply incorrect. This rule that has been in place in Cobalt has created a circumstance where the budget committee meets virtually in a closed meeting atmosphere not sharing the deliberations on budget items with the other members of council. That is unacceptable. Members of council may attend any committee meeting without the concern of the quorum requirement for the council. Budget committee meetings are open to the public and are subject to the same requirements as Council under section 239 of the Municipal Act.

The members of the budget committee have kept the deliberations to themselves. The CAO has not provided all members of council with the proposed budget documentation. Rather the budget process and documentation has been kept a secret by the CAO, the mayor and the other member of the committee.

It is recommended that the budget be presented by staff to all members of council, either sitting as Council or as a Committee of the Whole of Council. This would ensure that all members are familiar with each aspect of the budget being presented by administration.

It is recommended that the budget be reviewed by a Committee of the Whole with recommendations from that committee going to Council for approval. It is the council that is responsible for and approves the budget.

It is further recommended that the Budget Committee be immediately disbanded.

The budget should be presented by administration with an overview. The budget document provided to me included a line by line breakdown of the proposed budget. It is critical that council review the budget in broad categories rather than on a line by line basis.

Committees

During the interviews several unusual practices were described with respect to committees. These are resulting in distrust within the organization.

Council may determine the governance structure, ie, the committee structure. It is Council alone that should be creating and mandating committees. The reason council should be creating a committee is to provide advice and make recommendations to council.

The purpose of committees is not to provide committee members the opportunity to micromanage a particular operation of the town. It is not appropriate for any member of council to be dealing directly with staff other than the CAO. Nor is it appropriate for

members of council to enter into discussions with staff nor to direct work. This is particularly true with unionized staff.

All council members, including the mayor, should stay out of the workplace.

When I spoke to council I reviewed the statutory responsibilities for members of council and for the administration. There is nothing in the authorizing legislation that gives any one member of council authority to enter the workplace or to direct staff. That is a management responsibility, expressly stated in the authorizing provincial legislation. Committee chairs tend to believe that they have a responsibility to be hands on with the operation. This results in interference in the day-to-day operation of the organization. Council members need to stay out of the workplace.

Council exercises all power on behalf of the town. That is, Council sitting at a duly constituted public meeting exercises power by the enactment of by-laws.

Council must take control.

A majority of members of Council exercise the power. That duty includes the responsibility to protect staff from any member of council who chooses to ignore the rules.

Committee members should not determine what is deliberated at committee and what does and does not get forwarded to council. The responsibility for agenda preparation rests with staff. All committee agendas, including staff reports, should be provided to not only committee members, but to all members of council and the public. That is not happening.

All members of council, even those not on a committee may attend committee meetings.

The current committee system in place should be scrapped by council. It should be replaced by one of two alternative structures.

First, Council could operate without any committees. This will ensure that all reports from staff are seen by all members of council. In addition, delegations will be heard by all members. It will also eliminate or discourage a member from undertaking management responsibilities over a department. In this scenario, the mayor would chair the meetings. The only exception to this is in the circumstance that the mayor is absent. A meeting of council should not be rescheduled because the mayor is not available.

Regular meetings of council should be scheduled in the Procedure By-law. Two meetings a month or one meeting every three weeks would be an appropriate timeframe.

The second alternative, and the one I recommend, is for council to adopt a Committee of the Whole model. In this scenario, all items going to council would first go to committee of the whole. Often this committee structure is described as allowing members to have a "sober second thought". The committee should be chaired by the

deputy mayor. This will distinguish it from a Council meeting. The key is that all members will be receiving the same information.

One Committee of the Whole and one Council meeting each month will give staff adequate time to prepare agendas and minutes for both the committee and council.

It is critical for Council to take steps to ensure that:

- All members of council are "in the loop"
- No member of council be permitted to act as a manager of a department
- Staff reports and delegations are going to all of council.

These changes to the governance model will not eliminate the distrust amongst members but will reduce the opportunities for distrust to develop.

Council / Staff Relations...what council members must do

Members of council are interfering with the day operation. Staff are not allowed to do their jobs without one or more members of council, including the mayor, interfering and directing work. For the organization to have any chance of success going forward this must be stopped. It is a majority council that is responsible to ensure this happens.

There is a Code of Conduct for members. However, council needs to adopt a more specific policy respecting the conduct of its members that includes:

- ✓ No member shall direct work of staff
- ✓ All members will work through the CAO who may authorize staff to deal with a member
- ✓ Members will make appointments in advance to meet with staff
- ✓ No member will be authorized to visit municipal sites without the approval of council in the form of a motion
- ✓ A performance appraisal system for the CAO

It is disruptive to have a member of Council drop by without an appointment. All staff need to be able to do their job without interference by members of Council. Members should make an appointment in advance to meeting with a staff member. It is simple, common courtesy and good business practice.

Performance appraisal is critical. The performance appraisal should be done by Council using a process approved by Council. Outside assistance may be required. Performance appraisals by immediate supervisors of all of the officers and employees should be undertaken annually. Council should not be involved in performance appraisals except for the CAO.

Council / Staff Relations...what council members must do

The administration has a statutory duty to provide advice and recommendations to council and also to implement the decisions of council. Council will only make good

decisions if it is receiving good, quality information from staff. Council should expect that the administration will:

- ✓ Provide well written reports for council with a recommendation in the form of a motion for consideration by council
- ✓ Ensure that all members of council are provided with information so that no member is "out of the loop"
- ✓ Have a performance appraisal system in place that begins with the CAO and filters through the entire organization
- ✓ Train and empower all staff to advise any member of Council, including the mayor, who approaches them in the workplace to discuss a matter or direct their work that the employee be directed to advise the member that he or she should speak to the CAO This policy should be adopted by resolution of Council. Any breaches of the policy should be reported by the CAO to Council.

Confidentiality and Discretion

All members of Council in Ontario on taking office must swear a Declaration of Office. In the Declaration, each member swears that he or she "will truly, faithfully and impartially exercise this office to the best of my knowledge and ability". One aspect of this is the need to protect confidential information. Being elected to public office brings significant responsibilities. Exercising the office held imposes a duty that requires each member faithfully maintain the confidentiality of those matters that cannot be made public.

During the interviews there were a number of instances described where some members are sharing confidential information about the corporation and its staff with members of the public. This is simply inappropriate conduct for any member of Council. This breach goes to the issue of trust but also to the relationship between Council and its staff. Members should avoid conversations with the public involving confidential information, including staff performance, whether on the street, at a store, church or coffee shop.

Mayor's Fund

I was advised during the interviews that the mayor when she took office directed staff to not pay her the remuneration to which she would be entitled. Rather, the funds were to be placed in a special account. The mayor could then draw on that account for whatever purpose she deemed appropriate. There appears to be no limitation that the funds have to be paid for a municipal purpose. The fund is spent by the issuance of town cheques to the party identified by the mayor.

This practice may be a misuse of corporate resources. The mayor cannot direct that she not be paid the remuneration that Council has approved to be paid unless Council by by-law sets the mayor's remuneration at zero dollars.

I would urge Council to review this practice and seek guidance from the municipal auditor.

Council Meetings

It was observed by several people I interviewed that Council meetings need to be conducted in a more business-like manner. It is always useful for Council to adopt a more rather than less formal approach to meetings.

Whose meeting is it? It is a meeting of Council. The majority have control. It is true that the meeting is chaired by the mayor, it is the majority of Council that exercise control. It is recommended that the mayor conduct Council meetings in a formal manner in accordance with the town's Procedure By-law.

Chief Administrative Officer

Requests to Council

The CAO is primarily responsible for the day to day operations of the town. But this does not mean that she can act outside the scope of her duties outlined in the appointment by-law. It is Council, not individual members, that exercises power and the CAO must act within the responsibilities assigned.

There were several incidents described during the interviews where a request had been made to Council but that members of Council were not made aware of. That can happen, indeed in my capacity as City Solicitor for Sudbury I often dealt with matters that were directed to Council but were never presented to Council. The key is that the matter would not go to Council if it was not resolved with the person writing to the municipality. It would go if it required Council attention.

It is not acceptable for a person to write to Council, not get a response and be advised the matter has not been taken to Council.

Water System

A second situation where Council was not apprised of a situation related to management of the water system. I described to Council the personal duty now imposed on individuals with the organization under section 19 of the Safe Drinking Water Act, 2002 to ensure that the system is operating properly. This personal duty falls upon decision makers, that is, members of Council, senior administrators and the operators.

Information may not be getting to Council from its operator. While it is the CAO that determines what items should be included on a council or committee agenda, it is imperative that any information regarding the operation of the water system be shared with Council. This is just too important an area of responsibility for the corporation,

individual members and senior staff to not ensure that Council is receiving the information it requires.

Implementing Council Decisions

Once Council makes a decision the Municipal Act requires that staff move forward with implementation. If there is a problem doing so then there is an obligation to take the matter back to Council. The CAO cannot take a different course of action than is authorized by resolution or by-law of Council.

Final Observations

The Town of Cobalt is facing significant challenges. The financial challenges are going to be very difficult. Both user fees and grants are approximately double the revenue from taxation. Dollars must be allocated wisely. Added to this is the fact that the budget process is seriously broken.

There are serious issues between Council members and the administration. Members of council who treat staff as the "enemy" or who engage in an "us against them" campaign (with "us" as council and taxpayers and "them" as staff) will only end up doing the taxpayers a grave disservice. Although members of council may play the role of zealous advocate on behalf of the taxpayers, they must also balance that role against being an employer who treats staff with respect and dignity as the Code of Conduct requires.

Also, staff needs to be able to do their job without interference by individual members.

Council should be making structural changes that ensure all members of Council are receiving the same information and that both the administration and Council is being transparent in dealings with each other and the public. This falls to a majority of Council.

Summary of Recommendations

It is recommended that:

1. All members of council and staff review the statutory requirements for the respective roles of persons within the organization, both Council and staff.
2. Staff begin preparation of the 2017 current and capital budgets in September 2016.
3. The budget be presented to Council for consideration in December 2016.
4. Council adopt the 2017 budget in December 2016 or early 2017.
5. Council amend the Procedure By-law to disband all committees.
6. Council establish and mandate a Committee of the Whole which shall be responsible for the budget deliberations and recommendations to Council.
7. All matters going to Council first go to the Committee of the Whole.

8. There be one Council meeting and one Committee of the Whole meeting each month.
9. Any member of council who is not a member of a committee may attend any committee meeting that is open to the public generally.
10. No member shall direct work of staff.
11. All members will work through the CAO who may authorize staff to deal with a member.
12. Members shall make appointments in advance to meet with staff.
13. No member be authorized to visit municipal sites without the approval of council in the form of a motion
14. Staff provide well written reports for council with a recommendation in the form of a motion for consideration by council.
15. Staff shall ensure that all members of council are provided with information so that no member is "out of the loop"
16. Have a performance appraisal system in place that begins with the CAO and filters through the entire organization.
17. All staff be trained and empowered to advise any member of Council, including the mayor, who approaches them in the workplace to discuss a matter or direct their work that the member should speak to the CAO. This policy should be adopted by resolution of Council. Any breaches of the policy should be reported to Council by the CAO.
18. The duty of confidentiality be respected by all members and that "Coffee shop" conversations cease.
19. Council meetings be conducted in a formal manner. While the mayor chairs the meeting, the meeting belongs to Council.
20. Council be provided with all the information. Further, information from staff go to all members of council.
21. Administration implement council's decisions or report back to council as to why a council decision is not being implemented.

"We are really broken."

This refrain will not change at the Town of Cobalt unless there is a commitment by each person in the organization to change.

All of which is respectfully submitted.

Fred Dean